

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHERYL SEYMOUR
Claimant

VS.

BREWER'S COUNTRY MART
Respondent

AND

WAUSAU INSURANCE COMPANIES
Insurance Carrier

}
}
}
}
}

Docket No. 198,503

ORDER

Respondent appeals from a July 24, 1995 Preliminary Hearing Order by which Administrative Law Judge Alvin E. Witwer granted claimant's request for preliminary benefits of medical treatment, specifically authorizing Lynn D. Ketchum, M.D., as the treating physician.

ISSUES

On appeal, respondent contends the Administrative Law Judge exceeded his jurisdiction and authority by failing to comply with the provisions of K.S.A. 44-510(c)(1). Specifically, respondent alleges that the Administrative Law Judge, in granting medical benefits, was required to provide respondent with the opportunity to select the authorized health care provider or permit respondent to provide claimant with a list of three (3) health care providers from which to choose.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that it does not have jurisdiction over this preliminary hearing matter. The Administrative Law Judge has the authority to make a determination at a preliminary hearing, pursuant to K.S.A. 44-534a, concerning the furnishing of medical treatment.

Respondent attempts to characterize the claimant's preliminary hearing request as one for a change of treating physician. In so doing, counsel for respondent states that the claimant was provided authorized medical treatment. However, "was" is the operative word. The fact that respondent had cut claimant off from further medical treatment was the reason for the preliminary hearing.

Counsel for the respondent admitted at the preliminary hearing that medical treatment had been discontinued due to claimant having been rated and released to return to work by the authorized treating physician. In addition, the authorized treating physician issued a report dated February 15, 1995 finding claimant had reached maximum medical improvement. However, claimant was subsequently seen again by the treating physician on April 13, 1995 at which time he recommended claimant "be treated conservatively" and

that steroid injection "might be a consideration". It is not disputed that respondent was not providing medical treatment to the claimant at the time the seven (7) day notice of intent letter was sent to respondent on February 2, 1995. However, both at the time of the April 26, 1995 benefit review conference and at the July 21, 1995 preliminary hearing, the respondent offered to allow claimant to return to the authorized treating physician. This offer was not accepted by claimant. By this time claimant had been to Dr. Lynn Ketchum who, on March 23, 1995, had recommended a radical flexor tenosynovectomy at the wrist. Claimant was willing to undergo this surgery to relieve her symptoms.

Respondent attempts to distinguish this case factually from the numerous decisions of the Appeals Board finding that an Administrative Law Judge has the authority at a preliminary hearing to designate a specific treating physician pursuant to K.S.A. 44-510(b) where the respondent has knowledge of injury and refuses or neglects to reasonably provide the services of a health care provider. The Appeals Board has held that under circumstances where respondent has never provided authorized medical treatment or where those services have been provided but cut off, the Administrative Law Judge need not give the employer the opportunity to submit the names of three (3) health care providers unlike in a change-of-physician situation pursuant to K.S.A. 44-510(c)(1). Here we have a situation where respondent offered to return claimant to the same treating physician who had said he had no additional treatment to offer. Either way, the net effect is that the claimant is not receiving medical treatment and the Administrative Law Judge so found. The Appeals Board does not reach on review from a preliminary hearing order the factual issue of whether the respondent was furnishing medical treatment. This is because the Administrative Law Judge did not exceed his jurisdiction in finding that respondent was not providing medical treatment to claimant and that therefore claimant's request was for medical treatment and not for a change of physician.

Although the Appeals Board may have viewed the issue differently, the factual determination by the Administrative Law Judge was that the only physician offering additional medical treatment for claimant was Dr. Ketchum. This finding is not subject to Appeals Board review at this juncture of the proceedings. Furthermore, the Appeals Board need not decide the question of whether the respondent unreasonably refused or neglected to provide the services of a health care provider under K.S.A. 44-510(b). It is sufficient to know, and the Appeals Board so finds, that the Administrative Law Judge found that the respondent was not providing medical treatment to the claimant at the time of the preliminary hearing. Thus, the Administrative Law Judge is empowered to designate a treating physician and his decision in this regard is nonjurisdictional on appeal from a preliminary order.

Based upon the above, the Appeals Board finds that the Administrative Law Judge has not exceeded his jurisdiction and authority in designating Lynn D. Ketchum, M.D., as the authorized treating physician. Therefore the Appeals Board does not have jurisdiction to review this matter under the provisions of K.S.A. 44-551, as amended by S.B. 59 (1995).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's application for review should be, and is hereby, dismissed and the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer dated July 24, 1995 remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Overland Park, KS
John H. Thompson, Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director